

OPINION

from

Assoc. Prof. Dr. Silvia Stoyanova Tsoneva, New Bulgarian University, member of the scientific jury, determined by Order Z-RK-283/02.07.2024 of Prof. Ph.D. Plamen Doinov - Rector of the New Bulgarian University, in connection with the defense of a dissertation for the acquisition of the educational and scientific degree "Doctor" in the scientific subject "Civil Procedure Law", professional area 3.6. Law, field of higher education 3. Social, economic and legal sciences

Author of the dissertation: Mariya Georgieva Glushkova

Thesis title: „Preparation and submission of distribution under the Civil Procedure Code“

PhD supervisor: prof. DSc. Todor Kolarov

I. Brief biographical data about the applicant

Maria Georgieva Glushkova graduated Law at the Veliko Tarnovo University "St. St. Cyril and Methodius". During the period 2002-2006, she worked as a state enforcement agent at the Regional Court of Gorna Oryahovitsa. From 2006 to 2021 she acted as a private enforcement agent, registered under No. 730 at the Bulgarian Chamber of Private Enforcement Agents, with service area the District Court of Veliko Tarnovo.

II. General characteristics and structure of the dissertation

The presented dissertation meets the requirements of the Law on the Development of the Academic Staff in the Republic of Bulgaria. The topic of the dissertation is "Preparation and submission of distribution according to the Code of Civil Procedure". The thesis contains 214 pages. Structurally, it includes an introduction, six chapters and a conclusion.

The titles of the chapters are as follows: "Aims, Objectives and Method of Study", "Genesis and Development of Basic Institutions – Chirograph, Non-sequestrability, Privilege, Peremptory, Suretyship, Charges, Interest, Distribution, and their Modern Analogues", "Current Status of the problem", "Amount received in the account of the enforcement officer. Preparation, structure, content of the distribution", "Joining creditors. Accurate Calculation of Receivables", "Other Distributions". A list of literature is attached at the end. It includes 23 titles in Bulgarian. There are 103 footnotes in the text.

III. Relevance and significance of the topic of the dissertation

In Bulgarian law, the notion of distribution in the civil enforcement process has not been extensively studied in the legal doctrine. The topic of the dissertation is appropriately chosen. It is not only important in itself for the legal theory, but in addition it is particularly relevant for the practice and for the understanding of many other issues of the enforcement proceedings under the Civil procedure Code, closely connected to the distribution. All this determines the practical usefulness and scientific value of the work. The lack of separate monographic study of the institute of distribution in civil procedure law, its unclear legal nature and the controversial issues surrounding its application in practice support the relevance and scientific-applied significance of the topic of the dissertation.

IV. Characteristics and evaluation of the dissertation

The dissertation that is presented stands as a comprehensive and thorough study of an insufficiently studied legal institute of high importance for the legal theory and practice. The

overall assessment of the dissertation and the qualities of the doctoral student shown in the thesis can be summarized as follows: demonstration of a high level of knowledge of the entire field of civil enforcement law, ability to independently carry out a thorough and comprehensive academic study, ability to debate and present legal arguments, to examine critically and analytically wide range of problems, placed in a practical perspective and in the context of specific manifestations of actual factual hypotheses, to explore problems in-depth and to come up with ready proposals for legislative changes.

Chapter one of the dissertation is given the title "Aim, objectives and research method". It states that the aim of the study is to develop and present a complete, correct and legally compliant model, standard, sample, for the presentation and submission of a distribution according to the Civil Procedure Code.

The second chapter, "Genesis and development of basic institutions - chirograph, non-sequestrability, privilege, peremptory, suretyship, fees, interest, distribution, and their modern analogue", makes a brief historical review and survey of the legislative framework of some basic institutions of the enforcement procedure law, which are related to the topic of the dissertation.

Chapter three of the dissertation - "Current state of the problem" consists of three sections. The first of them 3.1. "Lacunae in the legislation, contradictory case law. Interpretive Decisions" points out, states and describes current problems related to the enforcement process, resulting from unclear or incomplete provisions in the legislation and the presence of conflicting case law on the topics under consideration. Some of the topics highlighted are: the issue of the debtor's waiver of protection under Art. 436a of the Civil Procedure Code, the interruption of the limitation period in the hypothesis of Art. 116, "c" Contacts and Obligations Act, voluntary payments from a debtor in the enforcement proceedings upon peremption and expired limitation period, voluntary periodic payments after initiation of the enforcement proceedings, set-off in the enforcement proceedings, problems related to fees and expenses in the enforcement proceedings, problems with joining the state in the enforcement proceedings, appealing an act of a enforcement officer dealing with expenses made. Section 3.2. "Collision of the enforcement under the Special Pledges Act and the universal enforcement" addresses problems of the legal position of the depositary and the distribution under the SPA. Section 3.3. "Collision with the enforcement under the Tax and Insurance Procedural Code. Private Usury" makes an analysis of Art. 169, para. 8 TIPC and Art. 76, para. 2 COA and examines the so-called "private usury" - a term introduced by the PhD student.

Chapter four examines the steps the enforcement officer must follow in order to prepare a proper and lawful distribution of the amounts received. The chapter is organized into three sections. In section 4.1. "Inadmissibility, Non-sequestrability, Peremption, Prescription" the PhD student asserts that before proceeding to preparing the distribution, the enforcement officer first and foremost must inspect whether the amount to be distributed constitutes sequestrable income/receivable or property (as well as whether the same has not been paid after the expiry of the limitation period). In this regard, specific hypotheses related to the legal nature of non-sequestrability have been examined. Attention has been paid to some complications in the enforcement process related to the participation of joint and several debtors. Section 4.2. "Role of the privileges under Art. 136 COA in the distribution process" analyzes the legal framework dealing with privileges in order to answer the question whether the right of preference is of substantive or procedural nature. It is accepted that the privilege is a substantive right because the law attaches special protection and preference to the receivable starting from the moment it comes into existence. The field of application of Art. 136, para. 4 COA is also examined. Section 4.3. is devoted to problems related to the VAT registration of the debtor.

Chapter Five "Joined Creditors. Accurate calculation of the claims" examines the issues of claimants joined ex lege in the hypotheses of Art. 458 of the Civil Procedure Code, in

conjunction with Art. 191 TIPC, Art. 459 of the CPC (Section 5.1.), joined claimants under Art. 456 CPC (Section 5.2.), accurate calculation of claims and costs in the enforcement proceedings (Section 5.3.), complications in drawing up the distribution resulting from the European Payment Order and the European Bank Account Preservation Order (Section 5.4.).

The last Sixth Chapter "Other distributions" is devoted to the distribution in case of assignment of property in lieu of payment (Section 6.1.), assignment of the claim for collection or in lieu of payment (Section 6.2.), sale of indivisible property subject to judicial division (Section 6.3.), content of the distribution order, time scheduling, submission and disbursement actions (Section 6.4.).

V. Evaluation of the scientific contributions

A number of scientific contributions can be highlighted in the dissertation work, among which the following deserve special attention:

- in-depth and wide-ranging consideration of the legal concept of distribution under the CPC
- analysis of multiple issues related of the whole enforcement process
- problem-orientated study, dealing with practical problems and up-to-date debated issues;
- numerous specific de lege ferenda proposals concerning the Civil Procedure Code, SPA, VATA and COA.

VI. Critical remarks

The following remarks could be made to the dissertation work:

- In my opinion, the structure of the dissertation work is not optimal. Part of the work with title "Aim, tasks, research method. Expected results" cannot constitute an independent chapter of a dissertation work. The title of the dissertation is "Preparation and submission of distribution according to the Civil Procedure Code".

The topic of the preparation of the distribution is included in the title of Chapter Four, but is absent in the headings of the sections of this chapter. Submission of the distribution, on the other hand, is covered in the final section of the last chapter, along with matters such as elements of the content, time scheduling and disbursement actions.

With a view to make the presentation more effective and consistent, it is recommended that a separate conclusion is included at the end of each chapter that would draw conclusions and indicate their importance and relevance to the logically organized structure and goals set at the very beginning of the research.

- On page 84 of the thesis the waiver of the benefits of the expired limitation period is presented in line with the voluntary discharge of the obligation. It is recommended that the topics of waiver of expired limitation, debt recognition and voluntary performance are additionally distinguished.

- When considering the hypothesis of transfer of the receivable in lieu of payment under Art. 510 of the CPC, it would be useful to consider and take into account the existing opinions in the legal doctrine regarding the applicability of Art. 65, para. 3 of the COA in this case.

- The bibliography can be enriched with more legal works and contemporary legal articles.

The above notes should be considered as recommendations, which do not affect the contributions of the dissertation work.

VII. Evaluation of the presented publications

For the purpose of this procedure, 2 publications on the topic of the dissertation have been submitted, namely:

- On some challenges in the preparation of the distribution according to the Civil Procedure Code, Special Pledges Act, Tax and Insurance Procedure Act and Commercial Act. NBU Yearbook, 2022 - electronic edition, vol. 1.

- Complications in the execution of an European order for payment and an European account preservation order. Law journal, NBU, no. 2/ 2023.

The articles listed above deal with the topic of the dissertation and contain some of the contributions of the dissertation.

VII. Evaluation of the abstract of the PhD thesis

The abstract prepared by the PhD student corresponds to the content of the dissertation. In a summarized and concise form, it presents the content of the dissertation by chapters and sections, giving a clear picture of the problems studied and the theses advocated in it.

VIII. Conclusion

The dissertation stands as a completed scientific work and represents a contribution in the field of enforcement procedure law. Based on this scientific thesis and the presented publications on the subject, I believe that the doctoral candidate Mariya Georgieva Glushkova possesses in-depth theoretical knowledge in the subject of Enforcement Procedure law and is cable to conduct independent scientific research. The documents submitted within the current procedure clearly show compliance with the minimum national requirements under Art. 2b, para. 2 and 3 and Art. 6, para. 3 of the Act on the Academic Staff Development in the Republic of Bulgaria for awarding the education and qualification degree “Doctor” to Mariya Georgieva Glushkova.

In view of the above, I assess positively the dissertation submitted for defense and propose that the Scientific Jury award the doctoral candidate Mariya Georgieva Glushkova the education and qualification degree “Doctor” in the scientific subject “Civil Procedure Law”, Professional field 3.6. “Law”.

September 30, 2024

Signature:
/assoc. prof. Dr. Silvia Tsoneva/